

April 15, 1999

The Honorable Carol M. Browner  
Administrator  
Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Administrator Browner:

Eighteen months ago, the General Accounting Office (GAO) released a report that assessed the progress under the Resource Conservation and Recovery Act (RCRA) corrective action program and cited the lack of resources as one of the principal reasons preventing an acceleration in the pace of cleanups. The following excerpts from the GAO report illuminate the apparent disconnect between the corrective action enforcement workload and budgeted resources:

EPA cites a lack of resources as one of the main reasons it cannot direct more than a relatively small number of the facilities still not in the program to begin cleanup each year. In fiscal year 1997, the agency expected to direct cleanup at less than 2 percent (46) of the 1,886 backlogged facilities -- 427 of them high priority -- that have not yet begun their program cleanups.

\* \* \* \* \*

This gap between workload and available resources has affected the progress of the program since its inception.

\* \* \* \* \*

Generally, EPA relies on its regions to decide how many corrective actions to initiate each year and which facilities to pursue, given their budget and available staff. However, limited resources is still an issue in both of the regions we reviewed. In fiscal year 1997, program managers in the Philadelphia region projected that the region would have enough resources to direct companies to begin cleanups at four of the 69 high-priority facilities awaiting cleanup. These resources will address none of the remaining 86 lower-priority facilities. Because none of the states in the region are authorized to issue either corrective action permits or orders, the region must perform these actions.

\* \* \* \* \*

Similarly, in addition to its current enforcement workload of 50 cases, the Chicago region has 377 facilities, including 82 high-priority facilities, that are eligible for corrective action. The region relies on its states to issue most new corrective action permits and enforcement orders for those permits since all of its states are authorized to do so. Because of EPA's and the states' resource shortfalls, however, regional officials projected that the region will undertake corrective action enforcement at only three of the facilities during fiscal year 1997 and anticipated that the states will undertake only a limited number of new cleanup actions.

To assist in further evaluating the status of enforcement activity at the high priority corrective action facilities and the resources budgeted to address these facilities, please provide the following information no later than May 15, 1999:

#### Budget

1. For FY 1998 is it accurate that Regional Corrective Action full-time-equivalents (FTEs) totaled 132.8 and the total corrective action FTEs for EPA headquarters was 17?
  - a. What number of the 132.8 Regional FTEs were allocated or used for enforcement actions by each Region?
  - b. Of the 17 headquarter FTEs, I understand that five FTEs were allocated to enforcement activities, is that correct?
  - c. How many FTEs in headquarters are allocated to RCRA permitting activities? How many FTEs in the Region are allocated to RCRA permitting activities?
2. If any FTEs from the Office of Regional Counsel were allocated to RCRA corrective action activities for FY 1998, please provide the total Regional Counsel FTEs that were so allocated for each Region. Please provide the total EPA Corrective Action FTEs nationwide in FY 1998, including enforcement and Regional Counsel FTEs, and please separately breakout the enforcement FTEs.
3. Please provide a similar breakout for FY 1999 and the FY 2000 budget request.

#### Enforcement Orders

1. For FY 1998, please provide the identity of each facility where an EPA corrective action enforcement order was issued pursuant to sections 3008(h) or 7003 of the Resource Conservation and Recovery Act. Please provide the identity of any facility which received a compliance order in FY 1997, FY 1998, or the first half of FY 1999 to enforce conditions of a permit relating to corrective action.
2. For FY 1999 and FY 2000, how many corrective action enforcement orders under Section 3008(h) and Section 7003 are budgeted by each EPA Region and Headquarters at high-priority facilities? If any, please indicate the number of any such corrective action enforcement orders that are planned at medium priority facilities for FY 1999 and FY 2000.

#### Federal Funding for States

1. For each state authorized to administer the RCRA corrective action program, please provide a break out of the funding from EPA. Please indicate any specific federal funding that was provided to and used by the state for (a) RCRA corrective action enforcement orders pursuant to Section 3008(h) or Section 7003 in FY 1998 and (b) enforcement actions for failing to comply with provisions of an order or permit. What, if any, is each states matching amount for its federal grant? Do the federal grant documents or other memoranda or agreements identify the number of RCRA corrective action orders or permit compliance orders that were to be undertaken by authorized states in FY 1998 or are contemplated in FY 1999? If so, please provide any such documents for FY 1998 or FY 1999.
2. What information does EPA have regarding the number of FTE's and the level of funding for each state program authorized for corrective action under RCRA? Please provide any such information.
3. Please provide any information you have about reductions or increases in funding that have occurred since the state was initially authorized to carry out the RCRA corrective action program.
4. Are states required to disclose to EPA the overall adequacy of funding and staff levels in order to maintain the authority to carry out the RCRA corrective action program?

#### State Authority

In February 1998, I received a letter from the Director of the Illinois Environmental Protection Agency which stated that "the legal tools that Illinois EPA has at its disposal are poorly suited to the goal of completing corrective action in a rapid fashion." Director Gade further stated that "Illinois EPA has no administrative order authority similar to the Section 3008(h) authority granted to U.S. EPA" and must request that U.S. EPA issue an order under Section 3008(h) of RCRA to authorized facilities that have had a release of hazardous waste. Please identify each state that is authorized to administer corrective action authorities but which do not have administrative order authority comparable to Section 3008(h) or Section 7003. Further, please identify those states that have enforcement authority comparable to Section 7003 in their state statute. Does EPA review corrective action orders issued by an authorized state? Can EPA, the authorized state, or both issue Section 3008(h) orders at interim status facilities?

### High-Priority Facilities

Several states have raised questions about the accuracy of the National Corrective Action Prioritization System (NCAPs) in identifying facilities as high-priority facilities. The General Accounting Office in its October 1997 report using EPA data placed 1,304 facilities in the high-priority category while more recently the EPA FY 2000 Annual Plan states that "EPA has established a baseline of 1,700 high priority corrective action facilities in January 1999."

Please provide a state-by-state breakout, with each facility listed alphabetically for each state, of the 1,700 high-priority RCRA corrective action facilities. For each of the 1,700 facilities please also provide the following information:

- a. When was the facility prioritized as a high-priority facility?
- b. Indicate the conditions that warrant the facility's classification as high-priority.
- c. Does the state generally agree with the facilities' designation by EPA as a high-priority facility? If not, why not?
- d. Identify whether EPA or the State has primacy in implementing RCRA corrective action at the facility.
- e. When did EPA or the State issue the facility an enforcement order to perform corrective action or a permit with an enforceable

schedule to perform corrective action?

f. Indicate the status of the facility (i.e., interim status, final permit).

g. For each facility, indicate whether all ground water releases at the facility were being "controlled" of October 1, 1998. Please define what the term "controlled" means as it is used in the FY 2000 Annual Plan. Specifically does it mean that the migration of all releases of hazardous waste or constituents thereof are being prevented from migrating beyond the unit boundary? As part of the "control" of ground water contamination is there a system in place which is operating to remove a significant amount of the source material in the ground water at the facility?

h. For each facility, indicate whether contaminated groundwater at the facility was actively being remediated (as opposed to controlled) as of October 1, 1998. Is the active groundwater remediation system designed to remediate the ground water so that it will attain MCL's as part of the final corrective action? Is the active ground water remediation system intended to restore the ground water for beneficial reuse other than drinking water? If so, please identify the beneficial use. Please identify the groundwater remediation system or technique that has been installed and is operating to restore the ground water to drinking water MCL's or other beneficial uses. Does the ground water at the facility contain contaminants at levels above the MCL's under the Safe Drinking Water Act? How many contaminants in the ground water at the facility are at levels above an applicable health advisory which has been issued? For a site where no active remediation is being conducted or planned, is it because the contaminants in the ground water are DNAPL's?

i. For each facility indicate whether institutional controls are being relied on as part of a portion or all of the final or completed corrective action. If so, please indicate the nature of the institutional controls and the method of enforcement.

j. Identify whether a health assessment has been performed at the facility by the Agency for Toxic Substances and Disease Registry pursuant to Section 3019 of the Solid Waste Disposal Act.

Thank you for your cooperation with this request. If any items take longer to provide, please notify our staff and provide such information as it becomes available.

Sincerely,

JOHN D. DINGELL  
RANKING MEMBER  
COMMITTEE ON COMMERCE

EDOLPHUS TOWNS  
RANKING MEMBER  
SUBCOMMITTEE ON FINANCE  
AND HAZARDOUS MATERIALS

cc:

The Honorable Tom Bliley, Chairman  
Committee on Commerce

The Honorable Michael G. Oxley, Chairman  
Subcommittee on Finance and Hazardous Materials

Mr. Peter McCumiskey  
Acting Assistant Administrator ATSDR